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 Insurance Corporation

UNITED STATES DISTRICT COURT
 WESTERN DISTRICT OF WASHINGTON
 AT SEATTLE

MCCARTHY BUILDING COMPANIES,
 INC., a Missouri corporation, successor to
 SDL CORPORATION, a Washington
 corporation,

Plaintiff,

v.

THE OHIO CASUALTY INSURANCE
 COMPANY, an Ohio corporation; LIBERTY
 SURPLUS INSURANCE CORPORATION, a
 New Hampshire corporation,

Defendants,

and

ARCH INSURANCE COMPANY, a Missouri
 corporation; ST. PAUL FIRE AND MARINE
 INSURANCE COMPANY, a Minnesota
 corporation,

Additional Parties.

No.

NOTICE OF REMOVAL OF ACTION
 UNDER 28 U.S.C. § 1441(a)
 (DIVERSITY)

Defendants THE OHIO CASUALTY INSURANCE COMPANY and LIBERTY
 SURPLUS INSURANCE CORPORATION ("Removing Defendants"), hereby give notice of
 their removal of the above-captioned action, Case No. 10-2-14433-1 SEA, currently pending
 in the Superior Court of King County, Washington, to the United States District Court for the

NOTICE OF REMOVAL - 1

1 Western District of Washington at Seattle pursuant to 28 U.S.C. § 1441, and in support
2 thereof state as follows:

3 1. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1332 and
4 28 U.S.C. § 1441.

5 2. This is a civil action for, among other things, breach of insurance contract, bad
6 faith, and violation of Washington's Insurance Fair Claims Act, RCW 48.30.015 ("IFCA").
7 Plaintiff filed its Complaint in this matter in the Superior Court of Washington for King
8 County on or about April 19, 2010 (King County Cause No. 10-2-14433-1 SEA). A copy of
9 the Complaint, the Order Setting Civil Case Schedule, and Efiling Receipt, which constitutes
10 the process pleadings received by Liberty Surplus Insurance Company ("Liberty"), are
11 attached hereto as Exhibit A. A copy of the Summons to Liberty as received from the King
12 County Superior Court is attached hereto as Exhibit B.

13 3. Defendants The Ohio Casualty Insurance Company ("Ohio Casualty") and
14 Liberty first received copies of the Complaint on April 19, 2010 when courtesy copies of the
15 Complaint, Order Setting Civil Case Schedule, and Efiling Receipt were provided to counsel
16 for both Defendants via electronic mail. Upon information and belief, Additional Parties,
17 Arch Insurance Company ("Arch") and St. Paul Fire and Marine Insurance Company ("St.
18 Paul") were provided with courtesy copies of the Complaint, Order Setting Case Schedule,
19 and Efiling Receipt via electronic mail on that same date.

20 4. The King County Superior Court Docket shows a Declaration of Service,
21 stating that a copies of the Summons, Complaint, King County Case Schedule, and discovery
22 requests were mailed to the Washington State Insurance Commissioner on April 22, 2010 for
23 service on the Defendants and the Additional Parties. The King County Superior Court
24 Docket for this matter is attached hereto as Exhibit C. Upon information and belief, the
25 Washington State Insurance Commissioner received these documents on or about April 26,
26 2010.

NOTICE OF REMOVAL - 2

1 5. Upon information and belief, Plaintiff McCarthy, a Missouri Corporation, is,
2 and at all relevant times has been, a citizen of and has its principal place of business in the
3 State of Missouri. Upon information and belief, Plaintiff's predecessor in interest, SDL
4 Corporation, was a citizen of and had its principal place of business in the State of
5 Washington.

6 6. Defendant Ohio Casualty is an Ohio corporation and has its principal place of
7 business in Ohio. Defendant Liberty is a New Hampshire corporation and has its principal
8 place of business in Massachusetts. Thus, both named Defendants are citizens of and have
9 principal places of business in states other than Washington and Missouri and the requisite
10 diversity of citizenship exists under 28 U.S.C. § 1332.

11 7. Upon information and belief, Additional Party, Arch is a Missouri corporation
12 and has its principal place of business in New York. Upon information and belief, Additional
13 Party, St. Paul is a Minnesota corporation and has its principal place of business in Minnesota.

14 8. Plaintiff's Complaint does not list a cause of action against either Arch or
15 St. Paul, but merely names Arch and St. Paul as Additional Parties.

16 9. Because Plaintiff's Complaint does not state any real and substantial
17 controversy between McCarthy and Additional Parties, Arch or St. Paul, Arch and St. Paul are
18 either nominal or fraudulently joined parties. See Navarro Savings Ass'n v. Lee, 446 U.S.
19 458, 461 (1980) ("[A] federal court must disregard nominal or formal parties and rest
20 jurisdiction only upon the citizenship of real parties to the controversy."); Strotek Corp. v. Air
21 Transp. Assoc. of Am., 300 F.3d 1129, 1133 (9th Cir. 2002) ("Defendants who are nominal
22 parties with nothing at stake may be disregarded in determining diversity, despite the
23 propriety of the technical joinder.") (citations omitted); United Computer Sys., Inc. v. AT&T
24 Corp., 298 F.3d 756 (9th Cir. 2002) ("If a plaintiff fails to state a cause of action against a
25 resident defendant, and the failure is obvious according to the well-settled rules of the state,
26 the joinder is fraudulent and 'the defendant's presence in the lawsuit is ignored for purposes

NOTICE OF REMOVAL - 3

1 of determining diversity.’”) (citing Morris v. Princess Cruises, Inc., 236 F.3d 1061, 1067 (9th
2 Cir. 2001); McCabe v. Gen. Foods. Corp., 811 F.2d 1336, 1339 (9th Cir. 1987)).

3 10. Although the prayer in Plaintiff’s Complaint does not specify the dollar
4 amount of damages Plaintiffs seek in this matter, Plaintiff requests reimbursement of at least
5 \$250,000. Removing Defendants believe Plaintiff is seeking damages in excess of the
6 jurisdictional amount of \$75,000.00 based upon its knowledge of the costs of defense,
7 McCarthy’s request for reimbursement of the \$250,000, and the nature of Plaintiff’s
8 allegations.

9 11. This matter is a civil action over which this Court has original jurisdiction
10 under the provisions of 28 U.S.C. § 1332. It is one that may be removed to this Court by
11 Removing Defendants pursuant to the provisions of 28 U.S.C. § 1441, in that it is a civil
12 action wherein the amount in controversy exceeds the sum of \$75,000.00, exclusive of
13 interest and costs, and the real and substantial controversy is between citizens of different
14 states.

15 12. Defendant Ohio Casualty has entered an appearance in this matter. Ohio
16 Casualty’s representative has informed the undersigned counsel that it joins in this removal.

17 13. Additional Party St. Paul has entered an appearance in this matter. This
18 Party’s representative has informed the undersigned counsel that it does not object to and
19 joins in this removal. Additional Party Arch has not yet entered an appearance in this matter.

20 14. It is not necessary for either St. Paul or Arch, as nominal parties, to join in this
21 removal action. The “rule of unanimity” under 28 USC § 1446(a) does not apply to “nominal,
22 unknown or fraudulently joined parties.” United Computer, 298 F.3d at 762 (emphasis
23 removed) (citing Emrich v. Touche Ross & Co., 846 F.2d 1190, 1193 n.1 (9th Cir. 1998)).
24 Thus, as a nominal or fraudulently joined party, neither Arch nor St. Paul need to consent to
25 this removal action.
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NOTICE OF REMOVAL - 4

1 15. A notice of Removal will be filed with the Clerk of the Superior Court of King
2 County in accordance with 28 U.S.C. § 1446(d).

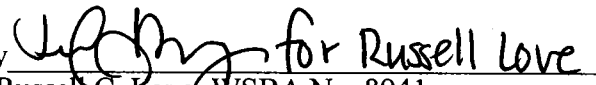
3
4 WHEREFORE, Removing Defendants pray that the above-entitled action now
5 pending against them in the Superior Court of Washington for King County be removed to the
6 United States District Court for the Western District of Washington at Seattle.

7
8 DATED this 14th day of May, 2010

9
10 LANE POWELL PC

11
12 By 
13 Mark G. Beard, WSBA No. 11737
14 Jennifer M. Beyerlein, WSBA No. 35754
15 Attorneys for Liberty Surplus Insurance
16 Corporation

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18 THORSRUD CANE & PAULICH

19
20 By 
21 Russell C. Love, WSBA No. 8941
22 Attorneys for Defendant The Ohio Casualty
23 Insurance Company
24
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NOTICE OF REMOVAL - 5